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RUEHBY/AMEMBASSY CANBERRA PRIORITY 0267  
RUEHWL/AMEMBASSY WELLINGTON PRIORITY 1246  
RHHJJPI/USPACOM HONOLULU HI PRIORITY  
RHMCSSU/FBI WASHINGTON DC PRIORITY  
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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 013581

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DEPT FOR S/CT, EAP/MTS  
DOJ FOR CTS THORNTON, AAG SWARTZ  
FBI FOR ETTUI/SSA ROTH  
NCTC WASHDC

E.O. 12958: DECL: 10/10/2016  
TAGS: PTER PGOV KJUS ASEC CASC ID  
SUBJECT: IMPLICATIONS OF THE BA'ASYIR DECISION

REF: A. JAKARTA 13563  
1B. JAKARTA 7555  
1C. JAKARTA 2848  
1D. JAKARTA 3026  
1E. JAKARTA 16215

Classified By: Political Officer Adam West for reasons 1.4(b) and (d).

1. (C) Summary. The decision by Indonesia's Supreme Court to overturn the conviction of Jemaah Islamiyah (JI) spiritual leader Abu Bakar Ba'asyir has a number of potential legal and political implications for the GOI's counterterrorism efforts. While the legal basis behind Ba'asyir's 2005 conviction was always tenuous, Embassy contacts have questioned the legal rational behind this latest decision, speculating that the unanimous decision of the five-judge panel was not based on legal considerations alone. The decision may also have an indirect affect on how Indonesian courts treat other appeals in terrorism cases. Several GOI officials have privately expressed shock at the decision and reaffirmed the GOI's commitment to continue aggressively combating terrorism. The clearing of Ba'asyir's name will bolster his claim that the trial was being directed by the U.S. all along, but indications are it will not lead to closer relations between Ba'asyir and mainstream Islamic organizations. End Summary.

The Ba'asyir case: a Tangled Web

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12. (SBU) The Indonesian Supreme Court announced on December 21 it had overturned the conviction of Jemaah Islamiyah (JI) spiritual leader Abu Bakar Ba'asyir. (ref A) The legal case against Ba'asyir was fraught with difficulty from the beginning. During his first trial in 2003, the judges acquitted Ba'asyir on all terrorism charges, convicting him solely on a minor violation of immigration regulations. After serving a short jail term, he was immediately re-arrested and brought to trial on a new set of charges. In March 2005 Ba'asyir was again acquitted on terrorism charges, but the court found him guilty of participating in a "sinister conspiracy to cause a fire or explosion that resulted in deaths" in connection with the Bali attacks. (ref D) The conspiracy conviction was based on the testimony of a single witness, Utomo Pamungkas, currently serving a life sentence for his role in the attack. According to Pamungkas, he and Amrozi (also convicted for his role in the attack and currently on death row) spoke to Ba'asyir about their "work

in Bali" in a meeting in the Philippines in August, 2002.

**¶13. (U)** A few weeks after the conviction, in a letter dated March 24, 2005, Amrozi stated that this testimony was coerced and false, and that no such meeting took place. Ba'asyir's Muslim Defense Team lawyers (who are also representing Amrozi) claimed that the letter constituted "new evidence" in the case, and used it as the basis for Ba'asyir's request for Judicial Review, which was filed in December 2005. (ref C) In its December 21 decision, the Court ruled that the new evidence demonstrated that there was no conspiracy between Ba'asyir and Amrozi, and that the judges in the 2003 trial had erred in not compelling Amrozi to testify during the trial.

#### The Decision: Fueling Controversy

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**¶14. (C)** The Supreme Court's decision will further fuel already contentious debates about the integrity of the Supreme Court.

Embassy contacts from the Indonesian National Police (INP) and Attorney General's Office (AGO) have criticized the decision and expressed doubts about the motives behind it. Prosecutor Narendra Jatna, who worked on the 2005 trial that led to Ba'asyir's conviction, told us that the testimony contained in the letter submitted by Amrozi had in fact been introduced during the trial and therefore did not constitute "new evidence" at all. Jatna described Chief Judge German Hoediarto as being involved in a number of "strange" decisions, including the ruling that reduced the sentence of Tommy Suharto from 15 to 10 years. (Note: Suharto, son of former President Soeharto, was convicted of murdering a member of the Supreme Court. He ultimately served less than

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five years and was conditionally released in October 2006.) Another prosecutor from the original case, Salman Maryadi, concurred with Jatna's opinion and speculated that there was a political agenda behind the decision. Another contact pointed out that Ba'asyir remains on UN terrorist lists, and therefore his exoneration is far from complete. Others have speculated that the Ba'asyir decision will make it easier for judges to overturn convictions in other terrorist cases, or at least lessen sentences. One police contact cited the newly submitted Judicial Review request of Amrozi and two other terrorists currently on death row as a case where judges might now feel emboldened to reduce the sentence to life in prison or even less.

#### Larger Implications

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**¶15. (C)** The private comments of GOI officials make clear that the decision in no way reflects a change in the GOI's CT policy. Presidential Advisor Dino Djajal and Minister of Justice Hamid Awaluddin both expressed shock at the verdict in a private meeting with one western diplomat. Djajal reportedly described the Supreme Court as "more and more divorced from reality," and assured that ongoing surveillance of Ba'asyir by Indonesian authorities would continue regardless. INP Chief Sutanto was quoted in the newspapers as stating that the decision will have no impact on ongoing INP CT operations.

**¶16. (C)** Ba'asyir has long maintained that the charges against him were part of a U.S. and Australian-led plot against Islam. His exoneration will undoubtedly be seen by his supporters as additional proof of this. However, more mainstream Muslim groups are likely to continue to keep their distance. While Islamic leaders have not commented publicly on the decision, Embassy contacts have indicated that the mainstream organizations are unlikely to change their unsympathetic views on Ba'asyir. A contact on the Central Board of Muhammadiyah told us that the group never endorsed people like Ba'asyir, and that the decision will not affect their relationship with the JI leader. A contact from the

Student Wing of Nahduatl Ulama went even further, suggesting that the decision was a result of the influence of Islamic radicals on the judicial system.

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